

1 Eugene Y. Mar (State Bar No. 227071)
emar@fbm.com

2 Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
3 San Francisco, California 94104
Telephone: (415) 954-4400
4 Facsimile: (415) 954-4480

5 Michael L. Junk, (appearance *pro hac vice*)
mjunk@groom.com

6 Groom Law Group, Chartered
1701 Pennsylvania Ave. NW
7 Washington, DC 20006
Telephone: (202) 857-0620
8 Facsimile: (202) 659-4503

9 Attorneys for BERT BELL/PETE ROZELLE
NFL PLAYER RETIREMENT PLAN; THE NFL
10 PLAYER SUPPLEMENT DISABILITY PLAN;
and RETIREMENT BOARD, AS
11 ADMINISTRATOR OF THE BERT
BELL/PETE ROZELLE NFL PLAYER
12 RETIREMENT PLAN

13
14 UNITED STATES DISTRICT COURT

15 NORTHERN DISTRICT OF CALIFORNIA, SAN FRANCISCO DIVISION
16

17 CHARLES DIMRY,
18
19 Plaintiff,

20 vs.

21 BERT BELL/PETE ROZELLE NFL
PLAYER RETIREMENT PLAN; THE NFL
22 PLAYER SUPPLEMENT DISABILITY
PLAN; and RETIREMENT BOARD, AS
ADMINISTRATOR OF THE BERT
23 BELL/PETE ROZELLE NFL PLAYER
RETIREMENT PLAN

24 Defendants.
25
26
27
28

Case No. 3:19-cv-05360-JSC

**DEFENDANTS' ANSWER TO
PLAINTIFF'S COMPLAINT**

The Hon. Jacqueline Scott Corley

Trial Date: None

1 Defendant Bert Bell/Pete Rozelle NFL Player Retirement Plan, Defendant NFL Player
2 Supplemental Disability Plan, and Defendant Retirement Board (collectively, “Defendants”)
3 answer the allegations set forth in Plaintiff’s Complaint, paragraph by paragraph, as follows.

4 JURISDICTION AND VENUE

5 1. Paragraph 1 contains conclusions of law that require no response. To the extent a
6 response is required, Defendants admit that Plaintiff’s cause of action arises under ERISA.

7 Defendants also admit the Court has subject matter jurisdiction over Plaintiff’s cause of action

8 2. Paragraph 2 contains conclusions of law that require no response. To the extent a
9 response is required, Defendants deny that they breached the terms of the Plan. Defendants also
10 deny that venue in this Court is proper under 29 U.S.C. section 1132(e)(2).

11 THE PARTIES

12 3. Admitted.

13 4. Admitted, except that the NFL Player Supplemental Disability Plan was renamed,
14 and is now called, the NFL Player Disability & Neurocognitive Benefit Plan.

15 FACTUAL ALLEGATIONS

16 5. Defendants admit that Plaintiff is a former professional football player in the
17 National Football League. Defendants currently lack knowledge or information sufficient to form
18 a belief about the truth of the remaining allegations contained in Paragraph 5. To the extent
19 Plaintiff relies on documents contained within the administrative record to support his allegations,
20 Defendants deny Plaintiff’s characterization of those documents, and instead rely on those
21 documents to speak for themselves. To the extent Plaintiff relies on documents outside the
22 administrative record to support his allegations, Defendants reserve the right to strike those
23 documents and any allegations based on them.

24 6. Defendants currently lack knowledge or information sufficient to form a belief
25 about the truth of the allegations contained in Paragraph 6. To the extent Plaintiff relies on
26 documents contained within the administrative record to support his allegations, Defendants deny
27 Plaintiff’s characterization of those documents, and instead rely on those documents to speak for
28 themselves. To the extent Plaintiff relies on documents outside the administrative record to

1 support his allegations, Defendants reserve the right to strike those documents and any allegations
2 based on them.

3 7. Defendants currently lack knowledge or information sufficient to form a belief
4 about the truth of the allegations contained in Paragraph 7. To the extent Plaintiff relies on
5 documents contained within the administrative record to support his allegations, Defendants deny
6 Plaintiff's characterization of those documents, and instead rely on those documents to speak for
7 themselves. To the extent Plaintiff relies on documents outside the administrative record to
8 support his allegations, Defendants reserve the right to strike those documents and any allegations
9 based on them.

10 8. Defendants admit that, at all relevant times, the Bert Bell/Pete Rozelle NFL Player
11 Retirement Plan (the "Plan") provided a partial disability benefit, known as the "Line-of-Duty"
12 disability ("LOD") benefit, and a total and permanent disability ("T&P") benefit to eligible Plan
13 participants, called "Players." Defendants deny each and every remaining allegation in Paragraph
14 8. To the extent Plaintiff relies on the Plan Document to support his allegations, Defendants deny
15 Plaintiff's characterization of the Plan's terms, and instead rely upon the terms of the Plan to speak
16 for themselves.

17 9. Admitted.

18 10. Denied.

19 11. Defendants admit that Plaintiff applied for LOD benefits in 2008, and was
20 ultimately awarded LOD benefits effective October 1, 2008. To the extent Plaintiff relies on
21 documents contained within the administrative record to support his allegations, Defendants deny
22 Plaintiff's characterization of those documents, and instead rely on those documents to speak for
23 themselves. To the extent Plaintiff relies on documents outside the administrative record to
24 support his allegations, Defendants reserve the right to strike those documents and any allegations
25 based on them.

26 12. Defendants currently lack knowledge or information sufficient to form a belief
27 about the truth of the allegations contained in Paragraph 12. To the extent Plaintiff relies on
28 documents contained within the administrative record to support his allegations, Defendants deny

1 Plaintiff's characterization of those documents, and instead rely on those documents to speak for
 2 themselves. To the extent Plaintiff relies on documents outside the administrative record to
 3 support his allegations, Defendants reserve the right to strike those documents and any allegations
 4 based on them.

5 13. Defendants admit that Plaintiff first applied for T&P benefits in June 2011.
 6 Defendants admit that the Plan's Disability Initial Claims Committee ("Committee") issued an
 7 initial decision denying that application. Defendants admit that Plaintiff appealed that decision for
 8 further review by the Plan's Retirement Board. Defendants admit that the Retirement Board
 9 issued a final decision denying Plaintiff's first application for T&P benefits in May 2012.
 10 Defendants deny each and every remaining allegation in Paragraph 13. To the extent Plaintiff
 11 relies on documents contained within the administrative record to support his allegations,
 12 Defendants deny Plaintiff's characterization of those documents, and instead rely on those
 13 documents to speak for themselves. To the extent Plaintiff relies on documents outside the
 14 administrative record to support his allegations, Defendants reserve the right to strike those
 15 documents and any allegations based on them.

16 14. Defendants admit that Plaintiff submitted a second application for T&P benefits on
 17 December 10, 2014. Defendants admit that the Committee issued an initial decision denying that
 18 application on February 5, 2015. Defendants deny each and every remaining allegation in
 19 Paragraph 14. To the extent Plaintiff relies on documents contained within the administrative
 20 record to support his allegations, Defendants deny Plaintiff's characterization of those documents,
 21 and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on
 22 documents outside the administrative record to support his allegations, Defendants reserve the
 23 right to strike those documents and any allegations based on them.

24 15. Defendants admit that Plaintiff appealed the Committee's decision on his second
 25 application to the Retirement Board on August 3, 2015.

26 16. Defendants admit that Plaintiff was scheduled for an additional evaluation with a
 27 Plan Neutral Physician named James Chen. Defendants deny each and every remaining allegation
 28 in Paragraph 16. To the extent Plaintiff relies on documents contained within the administrative

1 record to support his allegations, Defendants deny Plaintiff's characterization of those documents,
 2 and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on
 3 documents outside the administrative record to support his allegations, Defendants reserve the
 4 right to strike those documents and any allegations based on them.

5 17. Defendants admit that they facilitate, and some of the Plan's neutral physicians
 6 attend, periodic meetings of the Plan's neutral physicians. Defendants deny each and every
 7 remaining allegation in Paragraph 17. To the extent Plaintiff relies on documents contained within
 8 the administrative record to support his allegations, Defendants deny Plaintiff's characterization of
 9 those documents, and instead rely on those documents to speak for themselves. To the extent
 10 Plaintiff relies on documents outside the administrative record to support his allegations,
 11 Defendants reserve the right to strike those documents and any allegations based on them.

12 18. Defendants admit that, after further review, the Retirement Board denied Plaintiff's
 13 second application for T&P benefits, and that decision was explained to Plaintiff in a letter dated
 14 December 2, 2015. Defendants deny each and every remaining allegation in Paragraph 18. To the
 15 extent Plaintiff relies on documents contained within the administrative record to support his
 16 allegations, Defendants deny Plaintiff's characterization of those documents, and instead rely on
 17 those documents to speak for themselves. To the extent Plaintiff relies on documents outside the
 18 administrative record to support his allegations, Defendants reserve the right to strike those
 19 documents and any allegations based on them.

20 19. Defendants deny each every allegation in Paragraph 19.

21 20. Defendants admit that Plaintiff previously filed suit against Defendants on March
 22 23, 2016. Defendants admit that the prior suit was case number 3:16-cv-1413. Defendants admit
 23 that the present Complaint copies many of the allegations contained in the complaint(s) filed in the
 24 previous case. Defendants deny each and every remaining allegation in Paragraph 20.

25 21. Defendants deny each and every allegation in Paragraph 21. To the extent Plaintiff
 26 relies on documents contained within the administrative record to support his allegations,
 27 Defendants deny Plaintiff's characterization of those documents, and instead rely on those
 28 documents to speak for themselves. To the extent Plaintiff relies on documents outside the

administrative record to support his allegations, Defendants reserve the right to strike those documents and any allegations based on them.

22. Defendants admit that Judge Donato remanded Plaintiff's prior case to the Plan. Defendants deny Plaintiff's characterization of the remand decision, and instead rely on it to speak for itself.

23. Defendants deny each and every allegation in Paragraph 23. To the extent Plaintiff relies on documents contained within the administrative record to support his allegations, Defendants deny Plaintiff's characterization of those documents, and instead rely on those documents to speak for themselves. To the extent Plaintiff relies on documents outside the administrative record to support his allegations, Defendants reserve the right to strike those documents and any allegations based on them.

24. Denied.

25. Denied.

26. Denied.

27. Denied.

FIRST CAUSE OF ACTION
Recovery Of Employee Benefits: T&P Benefits
(Against Defendants; 29 U.S.C. § 1132(a)(1)(B))

28. Defendants incorporate their prior responses to Plaintiff's allegations.

29. Denied.

30. Denied.

31. Denied.

32. Denied.

33. Denied.

34. Denied.

In addition to the responses set forth in paragraphs 1 through 34 of this Answer, Defendants deny each and every allegation of fact and conclusion of law in the Complaint not otherwise specifically admitted in this Answer, and Defendants deny that Plaintiff is entitled to the relief demanded in the Complaint or to any relief whatsoever.

1 **FIRST AFFIRMATIVE DEFENSE**

2 The Retirement Board's decision was consistent with the terms of the Plan, supported by
3 substantial evidence, and otherwise reasonable. Therefore, the decision was neither arbitrary and
4 capricious nor an abuse of discretion, and it should be upheld.

5 **SECOND AFFIRMATIVE DEFENSE**

6 The Complaint fails, in whole or in part, to state a claim for which relief may be granted.

7 **THIRD AFFIRMATIVE DEFENSE**

8 Plaintiff's claims are barred, in whole or in part, by failure to exhaust administrative
9 remedies to the extent that Plaintiff's claims are based on arguments and/or evidence never
10 presented to the Retirement Board.

11 WHEREFORE, having fully answered Plaintiff's Complaint, Defendants pray that
12 judgment be entered in their favor and against Plaintiff, that the Court award Defendants all costs
13 and fees incurred by them in defending against Plaintiff's claims, pursuant to section 502(g)(1), 29
14 U.S.C. § 1132(g)(1), and that the Court grant Defendants such other and further relief as the Court
15 deems just and proper.

16 Dated: September 26, 2019

GROOM LAW GROUP, CHARTERED

17
18 By: /s/ Michael L. Junk
Michael L. Junk, *appearance pro hac vice*

19
20 Attorneys for BERT BELL/PETE ROZELLE NFL
21 PLAYER RETIREMENT PLAN; THE NFL PLAYER
22 SUPPLEMENT DISABILITY PLAN; and
23 RETIREMENT BOARD, AS ADMINISTRATOR OF
24 THE BERT BELL/PETE ROZELLE NFL PLAYER
25 RETIREMENT PLAN
26
27
28